

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES WEISS	: CIVIL ACTION
	:
v.	:
	:
UNITED STATES OF AMERICA	: NO. 00-1672

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 31, 2000

The Government appeals denial by the United States Bankruptcy Court for the Eastern District of Pennsylvania of its motion to lift a Chapter 13 automatic stay. The Government seeks to appeal a decision in a prior Chapter 7 adversary proceeding that certain tax liabilities were dischargeable. The stay will be lifted and the Government's appeal and debtor's cross-appeal will be heard.

BACKGROUND

Debtor Charles Weiss ("Weiss") filed for bankruptcy under Chapter 7. On August 17, 1999, the Bankruptcy Court ordered that Weiss's federal tax liabilities for 1986 and 1987 were dischargeable, but his federal tax liabilities for 1988 through 1991 were not dischargeable. The Government appealed and Weiss cross-appealed (together, "cross-appeals" or "Chapter 7 cross-appeals").¹ On October 8, 1999, Weiss filed a petition under Chapter 13 of the Bankruptcy Code; this automatically stayed the

¹ In 99-4707, the Government appeals the August 17, 1999 Bankruptcy Court order. In 99-5291, Charles Weiss cross-appeals the same order. On December 22, 1999, 99-4707 and 99-5291 were consolidated under 99-5297 and placed in administrative suspense.

pending cross-appeals in his Chapter 7 proceeding. On January 31, 2000, the Government moved in Bankruptcy Court for relief from the automatic stay to pursue its appeal of the Bankruptcy Court's August 17, 1999 Order; Weiss opposed lifting of the stay. On February 25, 2000, the Bankruptcy Court denied the Government's motion in the interest of prompt confirmation of Weiss's proposed Chapter 13 repayment plan.² The Government has appealed the Bankruptcy Court's February 25, 2000 Order.

DISCUSSION

The Bankruptcy Code automatically stays certain acts against a debtor upon filing a petition in bankruptcy. See 11 U.S.C. § 362. A party in interest can request relief from the stay if, after notice and hearing, "cause" is shown for terminating, annulling, modifying, or conditioning the stay. See 11 U.S.C. § 362(d)(1). An order denying relief from a stay is immediately appealable. See 28 U.S.C. § 158; United States v. Pelullo, 178 F.3d 196, 200 (3d Cir. 1999). A Bankruptcy Court's decision denying to lift the automatic stay is reviewed for abuse of discretion. See In re Wilson, 116 F.3d 87, 89 (3d Cir. 1997).

The Bankruptcy Court found no cause to lift the stay; it reasoned that lifting the stay would "unleash" the appeals process on its August 17, 1999 order in the Chapter 7 proceeding

² Weiss has proposed a plan which would pay 100% of the tax liability for tax years 1988-1991, totaling \$193,466.17. Weiss did not propose to make payments for tax years 1986-1987; the Government claims Weiss owes \$108,240.45 for those two years. See Brief for Appellee, at 4.

and delay confirmation of a repayment plan in the Chapter 13 proceeding. See Bankr. Ct. Mem. & Ord., Feb. 25, 2000, at 3. The Bankruptcy Court stated that "it serves the interests of all parties concerned to have a confirmed Chapter 13 plan in place while any appeals are pending." Id. The Bankruptcy Court wanted the debtor to begin repayment as soon as possible.

Section 362(d)(1) does not define "cause" for lifting a stay; a court must determine its existence based on the totality of circumstances. See In re Wilson, 116 F.3d 87, 90 (3d Cir. 1991). Cause is broadly construed; specific considerations may include: 1) the balance of harm to the parties if the stay is denied; and 2) the best interest of efficient administration. See, e.g., In re Tucson Estates, 912 F.2d 1162 (9th Cir. 1990); In re Morales, 238 B.R. 526 (Bankr. E.D. Mi. 1991).

If the cross-appeals are not decided before the Bankruptcy Court confirms a plan, the Government may appeal the confirmed plan; this will delay final resolution of both the Chapter 13 and Chapter 7 proceedings. If the cross-appeals are decided now, the Bankruptcy Court can consider a plan based on the outcome of the appellate proceedings. The Government is Weiss's largest creditor; determining the amount Weiss still owes the Government is the largest obstacle to a final repayment plan.

If the Government succeeds on its appeal and Weiss is unsuccessful on his cross-appeal, he will have debts in excess of

the unsecured debt limit under Chapter 13 and will be ineligible for Chapter 13 protection. See 11 U.S.C. § 109(e). Prompt decision of the Chapter 7 cross-appeals may expeditiously bring the Chapter 13 bankruptcy to completion. Confirming a Chapter 13 plan and then deciding appeals directly affecting the debtor's ability to abide by the confirmed plan would not be in the interest of the administration of justice. Immediate decision of the cross-appeals would save both parties delay and expense; efficiency mandates expeditious consideration of the pending appeals.

The Government has a due process right to appeal the Bankruptcy Court's dischargeability determination before confirmation of a repayment plan rendering its appeal moot. The Government's right to appeal a confirmed plan is not an adequate substitute, despite the Bankruptcy Court's desire to have the debtor begin payments promptly. The Government's right to due process requires consideration of its Chapter 7 appeal, before the debtor's Chapter 13 plan is confirmed.

CONCLUSION

The Bankruptcy Court's refusal to lift the automatic stay was an abuse of discretion. The stay is lifted to permit decision of the cross-appeals.

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ORDER

AND NOW this 31st day of July, 2000, upon consideration of the Bankruptcy Court's February 25, 2000 Order, the appellate brief for appellant, brief for appellee, and reply to brief for appellee, it is **ORDERED** that:

1. The Order of February 25, 2000 in Bankruptcy No. 99-32874DAS is **REVERSED**. The Chapter 13 automatic stay is lifted to allow the Chapter 7 appeals in 99-5297.

2. Civil Action 99-5297 shall be **REMOVED FROM ADMINISTRATIVE SUSPENSE FORTHWITH**.

3. Cross-appellants in 99-5297 (as consolidated) shall file briefs by August 21, 2000. Cross-appellees each shall respond by August 31, 2000. No replies are contemplated.

Norma L. Shapiro, S.J.